IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRIMINAL MISC.NO.77420 OF 2006 &
CRIMINAL REVISION NO.1690 OF 2006

DATE OF DECISION: DECEMBER 13, 2006

State of Haryana.

.....Petitioner

VERSUS

Surender Pal Singh and another.

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Yashwinder Singh, AAG, Haryana,
for the petitioner.

Mr. N. K. Sanghi &
Mr. S. S. Narula, Advocates.

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RANJIT SINGH, J.

This revision has been filed by the State against the order passed by Civil Judge (Senior Division)-cum-A.C.J.M., Gurgaon, rejecting the application moved by prosecution under Section 321 Cr.P.C., seeking withdrawal of case FIR No.726/1998 under Sections 380, 448, 453, 34 IPC.

The main ground advanced by Public Prosecutor in support of his prayer for withdrawal of prosecution was that there is no sufficient evidence to sustain the charges against the accused. Reference is made to re-investigation done in this case, whereby the cancellation report was also submitted by the

prosecution. This prayer was vehemently opposed by the complainant before the trial Court. Noticing the fact that prosecution supported the complainant at the time of deciding the application, seeking discharge of the accused, the Additional Chief Judicial Magistrate, Gurgaon, has declined the prayer and dismissed the application.

In the present revision, the decision has been challenged on number of grounds besides urging that what is required to be seen is that if such application was moved in a bonafide manner. It is further submitted that the prosecution may withdraw, not merely on the ground of paucity of evidence but on all other relevant factors like to further the broad ends of justice, public order, peace and tranquility etc., which aspects may now be considered.

Counsel for the accused-respondents have put in appearance and has supported the stand of the State.

An application is moved on behalf of respondent No.1 to place on record certain documents. One of the documents prayed to be brought on record is a compromise-agreement arrived at between the parties. Relying on this document and in addition to other grounds of challenge, it is submitted by counsel for respondent No.1 that this compromise be taken into consideration as an additional factor and the revision of the State, challenging the order of A.C.J.M., be allowed.

Concededly, the compromise was not there before the trial Magistrate to consider when he decided the application moved under Section 321 Cr.P.C. by the prosecution. Rather, a perusal of the impugned order would show that the prayer of the prosecution

was hotly contested by the complainant before the trial Court. This compromise apparently has been reached between the parties subsequent to the passing of impugned order. Since this aspect of the matter has not been considered by the trial Court, it would be appropriate that the entire issue in regard to grant of permission to withdraw this prosecution is re-considered in the light of new development that has now taken place. Further, earlier the main emphasis of the State to withdraw the prosecution was insufficiency of the evidence to substantiate the allegations. It has rightly been argued that a public prosecutor can withdraw prosecution not only on such but other grounds like to further the broad ends of justice, public order, peace and tranquility etc. Decision in the case of Ghanshyam Vs. State of M.P. & others, 2006 (4) RCR (Criminal) 653 may be seen in this regard. Delhi High Court in the case of Government of National Capital Territory of Delhi Vs. Preet Public Secondary School, 1998 (1) RCR (Criminal) 675 noticed various grounds on which such an application can be moved by prosecution. These grounds are still not considered exhaustive. Settlement of dispute between the parties was held as valid ground to withdraw the prosecution in Razack Vs. State of Kerala, 2001 (1) RCR (Criminal) 189.

Accordingly, the present revision is disposed of with the direction that the State, if so desire, may file a comprehensive petitions raising all the pleas available to it, at the first instance, before the trial Magistrate seeking permission to withdraw this prosecution. Though the earlier grounds raised have been considered by the trial Magistrate, yet it would be appropriate if the

Court reconsiders the entire matter by ignoring the earlier order in the light of the changed circumstances. Needless to observe that trial Court would consider the prayer of the prosecution keeping in view the law relating to the exercise of powers under Section 321 Cr.P.C. The trial Court may treat the impugned order earlier passed by it to be nonest while disposing the fresh application, if filed, by the prosecution.

December 13, 2006 **(RANJIT SINGH)**
khurmi **JUDGE**